FACTSHEET

AGRICULTURAL ENGINEERING

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MANURE AGREEMENTS WITH BROKERS AND NEIGHBOURS

D. Ward and D. McComb

(Replaces OMAFRA Factsheet *Manure Agreements with Brokers and Neighbours,* Order No. 04-061)

Farmers whose operations generate manure or agricultural source materials but lack an adequate landbase to spread these nutrients in a sustainable manner are faced with potentially difficult decision.

Options for handling the surplus manure or agriculture source material include:

- purchasing or renting/leasing additional land for spreading
- transferring material to a neighbour for land application or to an intermediate operation (e.g. mushroom compost facility)
- arranging an application agreement in which the owner of the land continues farming the property while the generator manages the application of manure
- arranging for a broker to take the material

This Factsheet explores each of these options to help you determine which best suits your circumstances and goals. Sample agreement forms are included. These forms are consistent with the current requirements of the Nutrient Management Act, 2002, (NMA) and Ontario Regulation (O. Reg. 267/03 as amended).

ACCESSING ADDITIONAL LANDBASE

Purchase or Rental/Lease of More Land

An operation can expand its landbase for manure application by purchasing more land, or by renting or leasing additional property. There may be reasons why these options are not desirable — purchasing or renting/leasing additional land may not be a good fit with your business plan, suitable land may not be available in the immediate vicinity, cropping may not be part of your current operation or you would need to make a significant investment to move into that business.

If you do not want to purchase or lease more land, you can enter into one of three agreements with a landowner. For materials transferred off the generating site to another location not owned by the generator, it is good management practice to have a formal agreement between the two parties; such an agreement may be required by the municipality or the NMA.

TYPES OF AGREEMENTS

The agreements discussed here are legal documents and therefore must be completed correctly. For example, if a leased property is in the name of more than one person, all owners have to sign the agreement. If the document must be witnessed, the witness cannot be a family member or business partner — he or she must be an "arms-length" third party.

Have a lawyer review these documents to ensure your interests are protected. Improperly executed agreements and contracts could leave you exposed to liability unnecessarily.

O. Reg 267/03 as amended requires that all of the following agreements must be in force for a minimum of one year. Because a Nutrient Management Strategy or Plan (NMS/P) is good for up to five years, a longer-term agreement (preferably five years) is recommended. If the agreement is terminated before the expiry of the NMS/P, it will be necessary to update the NMS/P and it may be necessary to resubmit it for approval.

1. Application Agreement

This optional agreement demonstrates that the landowner consents to the application. If the generator is required to have an NMS, the land described in the agreement is treated as part of the farm unit of the generator for the duration of the agreement. Therefore, the land must also be identified on the Farm Unit Declaration of the generator's farm unit.

A sample *Application Agreement* form is shown on page 4. In addition to the conditions set out on the sample, there may be other considerations that need to be documented. When and how the manure is applied may be a concern to the landowner. For example, he or she may not wish to have manure spread if it is too wet or if the crop is still standing. What contingencies are in place for such an eventuality? If there is a spill, what are the responsibilities of each party? Pollution liability insurance is a good idea for both parties.

It is also important to identify who owns the crop. Landowners, in agreeing to permit nutrients to be applied to their land, could be held liable for damages resulting from misuse or accidental release of these nutrients to the environment. A good agreement will help protect both parties from such occurrences.

2. Nutrient Transfer Agreement

If, as a "nutrient generator," you intend to have someone else manage the prescribed materials generated by your operation, then a *Nutrient Transfer Agreement* may be required by the municipality or O. Reg. 267/03 as amended.

The *Nutrient Transfer Agreement* must identify the generator, the person/company to whom the material is transferred, a statement setting out the type and quantity of material to be transferred, as well as time of the expected transfer. NMS and NMP identifier numbers are issued by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) for operations required to have an NMS/P. If assigned, these numbers must appear on these forms. Please see the sample form on page 6.

There are two types of *Nutrient Transfer Agreements.*

Transfer to Another Agricultural Operation

This agreement indicates that nutrients are being transferred to an operation for land application and implies that the NMS/P of each agricultural operation reflects that transfer. This form must be signed by the generator and the receiver, and must be included in the NMS/Ps of the agricultural operations of the generator and the receiver.

As with the *Application Agreement*, there may be other conditions contained in the *Nutrient Transfer Agreement*, such as which party will look after transporting the materials.

Transfer to an Intermediate Operation

An intermediate operation is one that receives the manure or agricultural source material in one form, then transforms those materials through some process, perhaps in combination with other materials, into another form.

For instance, a mushroom operation receives manure from a livestock farm and transforms it into composted mushroom substrate. A *Nutrient Transfer Agreement* is required in these situations.

Other examples of intermediate operations include composting operations for horticultural and landscaping end uses, aerobic and anaerobic digestion.

If your operation is required to have an NMS, as a generator, you are responsible for ensuring that between your operation and the intermediate operation, there is sufficient storage capacity to comply with O. Reg. 267/03 as amended.

3. Broker Agreement

A broker is a person who receives prescribed materials from an operation (but does not generate a new nutrient product from those materials), and transfers the prescribed materials to another operation, applies them to land on behalf of another or stores them for either purpose.

A broker, under O. Reg. 267/03 s. 1.(1), could include a person who transports agricultural source material (e.g. manure) or non-agricultural source materials (e.g. sewage biosolids) from a generator to a receiver. A broker may or may not land apply the material, and historically has been more commonly referred to as a "hauler."

A generator, receiver, municipality or the Regulation may require a broker to complete a *Broker Agreement Form* with:

- each person from whom they receive prescribed materials, and
- each person to whom they transfer prescribed materials

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Generators and receivers required to have an NMS/P must complete *Broker Agreement* forms when using the services of a broker. Brokers must have the operation identifier of each generator or receiver who is subject to the Regulation and with whom they have an agreement. Each party to the agreement must have a signed copy.

Because brokers must meet a stringent set of licensing requirements, they will likely be held accountable for more of the liability issues surrounding the transfer of materials. Nevertheless, generators are responsible for knowing whether there is sufficient storage available between their operation and the brokers to comply with the Regulation. Generators are also responsible for confirming that any broker they are dealing with is certified to meet the requirements of the Regulation.

In the case of biosolids, a broker must first possess a waste management system certificate of approval or broker certificate to transport non-agricultural source materials. The broker must provide an annual report that includes all sites to which prescribed non-agricultural source materials and associated volumes was delivered and land-applied. This annual report must be kept for a minimum of five years.

ACCESS TO AGREEMENTS

Please note that the general public may access agreements made to comply with the NMA Regulation and/or required by local municipalities through the Freedom of Information Act.

Standard Forms

Sample completed forms are provided in this Factsheet.

This Factsheet was written by **Daniel Ward, P.Eng.**, Rural Management Engineer, Environmental Policy and Programs Branch, and **Dale McComb**, Nutrient Management Specialist, Nutrient Management Branch,OMAFRA.

In 2003, the Nutrient Management Act was passed to reduce the potential for environmental contamination from some of our agricultural practices. It addresses how we manage nutrients, most particularly manure, as we store and apply them to farmland.

This Factsheet is part of a series to help you understand how the NMA Regulation pertains to your operation. The Factsheet series is not meant to provide legal advice. Please consult the regulation and protocols for specific legal details. Consult your lawyer if you have questions about your legal obligations.

For more information on the NMA call the Nutrient Management Information Line at 1-866-242-4460, e-mail nman@omafra.gov.on.ca or visit *www.omafra.gov.on.ca.*

Factsheets are continually being updated so please ensure that you have the most recent version.

Some common acronyms

The Nutrient Management Act brought with it new terms that have quickly become common language and for brevity are usually abbreviated. These include:

Nutrient Management Act	NMA
Nutrient Management Plan	NMP
Nutrient Management Strategy	NMS
Nutrient Management Strategy & Plan	NMS/P

OPTIONAL APPLICATION AGREEMENT

An application agreement is not required by Ontario Regulation 267/03 but may be used by operations required to have a Nutrient Management Plan and/or Nutrient Management Strategy as defined by Regulation 267/03, where nutrients are applied to land that is not owned or rented by the generator of the nutrients and the generator intends to manage the application of nutrients to the land.

GENERATOR INFORMATION:

Name of generator of manure/prescribed materials to be land applied: John Farmer

Legal Name of the owner of the generating operation: John Farmer Ltd.

Address RR #1, 555 Concession 2, Anytown, ON. N0N 0N0

Telephone: 555-1234

Operation Identifier:
(if previously assigned by Ministry)

LAND OWNER/RECEIVER INFORMATION:

Owner/manager of land on which manure/prescribed materials will be applied: Joe Commonman

Legal name of the owner of the receiving operation: Commonman Enterprises, Inc.

Address: RR #2, , 555 Concession 3, Anytown, ON. N0N 0N0

Telephone: 888-9876

Legal name of the land owner:
(if different from above)

Address:

Operation Identifier:
(if previously assigned by Ministry)

AGREEMENT INFORMATION:

Term of Agreement
(no less than 1 yr.): 5 years

Agreement commences on: September 1, 2006

Agreement ceases on: August 31, 2011

This agreement, between the parties named above, allows for the following fields to be included in the farm unit operator's Farm Unit Declaration and for application of manure to these fields under the farm unit's nutrient management plan.

List each field/section under this agreement:

Field/ Section	**Lot**	Concession	**Township**	**County**	**Tillable Acres**	**Roll Number**
3	12	3	My Township	My County	45	355335555003555
6	11	3	My Township	My County	30	355335555003556

☐ There are more fields listed on the back of this form.

I, Joe Commonman (landowner) give permission to John Farmer (generator of manure/prescribed materials) to declare the above lands as part of the farm unit covered by the nutrient management strategy for the time period covered by this agreement.

I also give permission to the farm unit operator/authorized agent to do soil sampling on the properties listed to determine the condition of the soil. I also agree that the land identified in this agreement will not be used for the application of any other prescribed material, originating from any other operation, including my own (if I have any) during the term of this agreement.

I also agree that the prescribed materials covered by this agreement will be applied in accordance to the nutrient management plan that applies to the farm unit into which these lands are incorporated.

A spill contingency plan was developed and fully reviewed by both parties.

Joe Commonman		Jan. 1, 2006
Land Owner (print)	**Signature**	Date
John Farmer		Jan. 1, 2006
Farm Unit Operator/ Authorized Agent (print)	**Signature**	Date
I.C. Clearly		Jan. 1, 2006
Witness (print)	**Signature**	Date

Note: *Permission to use these lands is required from all property owners listed on the title to the land. For properties owned by more than one person, permission may be given by additional owners in the form of a signature on this form or a signed letter accompanying this form.*

SAMPLE NUTRIENT TRANSFER AGREEMENT

GENERATOR

Name: John Farmer

Operation Identifier
(if previously assigned by Ministry): _____

and

RECEIVER

Name: Joe Commonman

Operation Identifier:
(if previously assigned by Ministry): _____

Location of where prescribed materials are to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading : 45 acres

This agreement, between the parties named above, is for the transfer of the prescribed material identified as:

- [x] Farm Animal Manure
- [ ] Washwaters from Agricultural Operations
- [ ] Runoff from Livestock Yards or Manure Storage Facilities
- [ ] Organic Materials Produced by Intermediate Generators (i.e. Compost)
- [ ] Biosolids (i.e. municipal sewage, pulp and paper sludge)

Proposed date(s) of transfer: Each May and December

Quantity transferred: 150000 gallons

The Parties to this Agreement Agree as Follows:

- Both Parties will meet the requirements of the Nutrient Management Act, 2002, Ontario Regulation 267/03.
- The Generator and the Receiver warrant that between them there is adequate storage for these prescribed materials that meets the requirements for construction and siting in Part VIII of the Regulation, if required by the Nutrient Management Act, 2002 Ontario Regulation 267/03.
- The terms of this agreement shall strictly apply to the present Receiver. Should the Receiver use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

This agreement shall be in force for a minimum period of one (1) year commencing January 1, 2006 and ending December 31, 2011 .

John Farmer		Jan. 1, 2006
Generator Name (print)	**Signature**	**Date**
Joe Commonman		Jan. 1, 2006
Receiver Name (print)	**Signature**	**Date**
I.C. CLEARLY		Jan. 1, 2006
Witness Name (print)	**Signature**	**Date**

SAMPLE BROKER AGREEMENT WITH GENERATOR

BROKER

Name and **Certification Number:** Manure Brokers Inc 99999999

and

GENERATOR

Name: Joe Farmer

Operation Identifier:
(if previously assigned by Ministry): _____

This agreement, between the parties named above, is for the transfer of the prescribed material identified as:

- [x] Farm Animal Manure
- [ ] Washwaters from Agricultural Operations
- [ ] Runoff from Livestock Yards or Manure Storage Facilities
- [ ] Organic Materials Produced by Intermediate Generators (i.e. Compost)
- [ ] Biosolids (i.e. municipal sewage, pulp and paper sludge)

Description of operation where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer: Each May and September

Quantity transferred: 150000

Days of Storage available by broker: _____

The Parties to this Agreement Agree as Follows:
This agreement shall be in force for a minimum period of one (1) year commencing

January 1, 2006 and ending December 31, 2011 .

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

Generator Name (print)	**Signature**	**Date**
Broker Name (print)	**Signature**	**Date**
Witness Name (print)	**Signature**	**Date**

SAMPLE BROKER AGREEMENT WITH RECEIVER

BROKER

Name and **Certification Number:** Manure Brokers Inc. 9999999

and

RECEIVER

Location of where prescribed materials to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading of prescribed materials: 45

Name: Joe Commonman

Operation Identifier:
(if previously assigned by Ministry):

This agreement, between the parties named above, is for the transfer of the prescribed material identified as:

- [x] Farm Animal Manure
- [ ] Washwaters from Agricultural Operations
- [ ] Runoff from Livestock Yards or Manure Storage Facilities
- [ ] Organic Materials Produced by Intermediate Generators (i.e. Compost)
- [ ] Biosolids (i.e. municipal sewage, pulp and paper sludge)

Description of operation where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer: Each May and September

Quantity transferred: 150000 gallons

The Parties to this Agreement Agree as Follows:
This agreement shall be in force for a minimum period of one (1) year commencing

January 1, 2006 and ending December 31, 2011 .

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

Receiver Name (print)	**Signature**	**Date**
Broker Name (print)	**Signature**	**Date**
Witness Name (print)	**Signature**	**Date**

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